
U.S. DEPARTMENT OF LABOR

SECRETARY OF LABOR
WASHINGTON, D.C.

DATE: September 29, 1989
CASE NO. 87-ERA-2

IN THE MATTER OF

SAMUEL L. THOMPSON,
COMPLAINANT,

v.

THE DETROIT EDISON COMPANY,
RESPONDENT.

BEFORE: THE SECRETARY OF LABOR

ORDER DENYING MOTION TO RECONSIDER

On April 14, 1987, the Administrative Law Judge (ALJ) in this case arising under the employee protection provision of the Energy Reorganization Act of 1974, as amended (ERA), 42 U.S.C. § 5851 (1982), issued a [Recommended] Order of Dismissal With Prejudice pursuant to 29 C.F.R. § 18.39(b) (1988) on the basis that "the parties have agreed to a settlement of the claims herein." On October 28, 1987, Secretary Brock issued an Order to submit Settlement Agreement so that he could fulfill his obligation, derived from 42 U.S.C. § 5851 (b) (2) (A), to determine whether the terms of the settlement are fair, adequate and reasonable. Respondent filed a Motion for Reconsideration and for Dismissal (Motion to Reconsider). Respondent represented that Complainant did not oppose Respondent's motion. Complaint has not responded directly to the order to Submit.

Respondent asserted in its Motion to Reconsider that there is nothing in the regulations implementing the ERA, 29 C.F.R. Part 24, which prohibits dismissal by settlement or which requires such settlements to be submitted to the Secretary for review. In addition, Respondent argued that under 29 C.F.R. § 18.9 (c) (2) (1988), the parties have entered

into an agreement to dismiss the complaint which is final upon issuance of an by the ALJ. Finally, Respondent argued that under Rule 41 of

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the Federal Rules of Civil Procedure, the parties have an unconditional right to enter into a stipulation dismissing the complaint. Respondent therefore requested that the Secretary reconsider the Order to Submit Settlement, withdraw it, and that this case be closed. Respondent's request is denied for the reasons discussed below.

I agree that in ordinary lawsuits brought by one private party against another private party, where the rights of other persons will not be affected, "settlement of the dispute is solely in the hands of the parties." *United States v. City of Miami*, 614 F.2d 1322, 1330 (5th Cir. 1980), *aff'd in part and vacated and remanded in part on other grounds on rehearing en banc*, 664 F.2d 435 (5th Cir. 1981). Thus, under Fed. R. Civ. P. 41(a)(1)(ii). a stipulation signed by all parties who have appeared in the court action is effective automatically, without judicial involvement. *Gardiner v. A.H. Robins Co., Inc.*, 747 F.2d 1180, 1189 (8th Cir. 1984). The trial court judge must "'stand[] indifferent,'" and not interfere with the parties' "unconditional right" to a dismissal by stipulation. Id. at 1189-1190 (citation omitted). *See also Janus Films, Inc. v. Miller*, 801 F.2d 578, 582, 585 (2d Cir. 1986); *City of Miami*, 614 F.2d at 1332.

However, by its terms Rule 41 does not apply where "any statute of the United States" establishes other procedures for dismissal of actions pursuant to settlements, for example in class actions, bankruptcy proceedings, shareholder derivative suits, or antitrust suits. The ERA requires the Secretary to issue an order resolving the case "unless the proceeding on the complaint is terminated by the Secretary on the basis of a settlement entered into by the Secretary and the person alleged to have committed such violation . . . . " 42 U.S.C. § 5851(b) (2) (A).[1] The Secretary has held a number of times in ERA cases that the case cannot be dismissed on the basis of a settlement "unless the Secretary finds that the settlement is fair, adequate and reasonable." *Fuchko and Yunker v. Georgia Power Co*., Case Nos. 89-ERA-9, 10, Secretary's Order to Submit Settlement Agreement issued March 23, 1989, at 2, and cases cited therein. Although it is not necessary for the parties' settlement to be appended to an order approving a settlement and dismissing a case under the ERA, the Secretary has held that "it is error for the ALJ to dismiss a case without reviewing the settlement and making a recommendation of whether the settlement

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is fair, adequate and reasonable." Id. at 1-2.

The Department of Labor does not simply provide a forum for private parties to litigate their private employment discrimination suits. Protected whistleblowing under the ERA

may expose not just private harms but health and safety hazards to the public. The Secretary represents the public interest by assuring that settlements adequately protect whistleblowers. *Cf. Virginia Electric and Power Co*., 19 FERC ¶. 61,333 (Federal Energy Regulatory Commission 1982) ("[B]efore approving a settlement, regardless of whether it is contested or enjoys the unanimous support of the parties, the Commission is obliged to make an independent determination that the settlement is just and reasonable and in the public interest.")

Accordingly, Respondent's motion is DENIED. The parties are ordered to submit a copy of the settlement agreement to me within 30 days of receipt of this order. If a copy of the agreement has not been submitted at that time, this case will be remanded to the Administrative Law Judge for a hearing on the merits.

SO ORDERED.

ELIZABETH DOLE
Secretary of Labor

Washington, D.C.

[ENDNOTES]

[1] The provisions of the Rules of Practice and Procedure for Administrative Hearings before the Office of Administrative Law Judges, 29 C.F.R. Part 18 (1988), upon which Respondent relies in part, do not apply where they are inconsistent with specific statutes or regulations. 29 C.F.R. § 18.1(a).